

AMERICAN POLARIZERS, INC.

TERMS AND CONDITIONS OF SALE

1. Status of Terms and Conditions.

(a) American Polarizers, Inc. (“**Seller**”) cannot negotiate each sale contract individually and still provide competitive prices for its products (“**Products**”) and efficient service. Accordingly, these Terms and Conditions shall apply to all contracts for the purchase of Products from Seller.

(b) Seller's performance is expressly made conditional on Customer's assent to these Terms and Conditions. These Terms and Conditions serve as a written objection to and rejection of all inconsistent or additional terms, conditions and limitations contained on any invitation to bid, request for quote, purchase order, web site, or other communication from Customer. If these Terms and Conditions differ from Customer's terms and conditions, these Terms and Conditions will be construed as a counteroffer and will not be effective as an acceptance of any of Customer's terms and conditions that conflict herewith.

(c) Seller's commencement of manufacture or shipment of the Products ordered by Customer shall not be deemed acceptance of any of Customer's terms and conditions, and Customer's acceptance or use of any Product shall be deemed acceptance of these Terms and Conditions.

2. Acceptance: Seller may accept or reject any Customer order in Seller's absolute discretion. Seller shall not be deemed to have accepted any Customer order by reason of acknowledging its receipt, but only by a written confirmation signed by Seller formally accepting the Purchase Order.

3. Documentation. Seller shall provide Customer with such data or documentation as Seller may specifically agree. Additional copies of data or documentation or requests for unique data or documentation will cause Seller additional expense and will be made available to Customer at additional cost.

4. Changes. Customer's changes made after Seller's acceptance of the order that affect the specifications or configuration of the Products or otherwise affect the scope of the order shall be submitted in writing by Customer and shall become binding only if expressly approved in writing by Seller. All charges resulting from such changes shall be solely determined by Seller and shall be paid by Customer. Seller shall not be liable for any shipping delays resulting from such changes. Seller may make such changes in or discontinue any Products as Seller sees fit, upon reasonable notice, but any contract for sale of Products that has been formed before the effective date of such changes or discontinuance will be filled in accordance with its terms.

5. Taxes. All government charges upon the production, shipment and sale of Products, including, but not limited to, sales and use taxes, export and import taxes, excises and duties, and value added tax, shall be paid by Customer or, in lieu thereof, Customer shall furnish Seller with a tax exemption certificate acceptable to the authority imposing the tax on Seller.

6. Credit. If in Seller's opinion, there is a material adverse change in Customer's financial condition or Customer has not, within the agreed time, fully paid for Products previously shipped under this and/or another agreement(s) with Seller, Seller reserves the right to revoke Customer's credit and/or suspend performance on this and/or other orders and future shipments and/or demand reasonable assurance of performance.

7. Inspection. Customer shall inspect all Products within ten days of delivery, and Customer's failure to reject Products for non-conformance with the contract within such period shall waive all rights of rejection or revocation of acceptance.

8. Shipment and Risk of Loss. All sales are Ex Works, Seller's factory unless shipped on Seller's carrier account number. Where Products are shipped on Seller's carrier account number, Seller shall arrange shipment to the agreed delivery destination, but risk of loss shall pass to Customer on Seller's delivery of the Products to the carrier. Shipping contracts made by Seller shall be for Customer's account. All claims for loss or damage after risk of loss has

passed to Customer shall be filed by Customer with the carrier and Customer shall be liable to Seller for the full price of the Products, irrespective of loss or damage in transit. Seller shall not be required to provide freight cost receipts to Customer at the time of invoice.

9. Late Payments. All discount periods begin on the invoice date and all payments are due within 30 days after the invoice date. A finance charge of 1.5% shall be charged for each month or portion thereof that payments are received later than 30 days after the invoice date. In the event applicable law specifies a lower rate of interest, past-due payments shall be subject to a service charge equal to the highest rate authorized by law.

10. Resale Products.

(a) **“Resale Products”** are goods (if any) sold along with Seller's Products but not manufactured by Seller, and which are supplied as distinct components as an accommodation to Customer. Seller's responsibility for Resale Products is limited to commercially reasonable effort to arrange for procurement and shipping. Standard documentation shall be only as supplied by the Resale Product manufacturer. All source inspections shall be arranged by Customer with the Resale Product manufacturer.

(b) SELLER MAKES NO WARRANTY FOR RESALE PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ONLY WARRANTIES MADE WITH REGARD TO RESALE PRODUCTS ARE THOSE MADE BY THE RESALE PRODUCT MANUFACTURER TO CUSTOMER, IF ANY. Seller shall not be liable for delays caused by Resale Product manufacturer.

(c) Customer further agrees that Customer's SOLE AND EXCLUSIVE REMEDY against Seller with respect to Resale Products shall be limited to the difference between the Resale Product manufacturer's price to Seller and Seller's price to Customer for the Resale Products causing such breach.

11. Warranty.

(a) Seller warrants that, when delivered and for a further period of ninety (90) days or until further processing by Customer or others, whichever is earlier sooner, Products made by Seller will comply with Seller standard specifications and any expressly agreed specifications (the **“Specifications”**) and will be free of material defects in materials and workmanship.

(b) Products or part(s) established by Seller to be defective in workmanship and/or material shall be replaced free of charge, F.O.B. Seller's factory provided the nonconforming Product is returned to Seller, transportation prepaid, within the Warranty Period. At Seller's option, Seller may refund the price paid for the nonconforming Product. Replacement or refund is Customer's sole remedy for nonconforming Product.

(c) Under no circumstances shall Products be returned by Customer unless advance written authorization and shipping instructions have been secured from Seller. Excluded from all warranty coverage are expendable items and all items which have been subject to further processing, or to abuse, misuse, or damage from any external cause whatsoever.

(d) SELLER GRANTS ONLY THE ABOVE STATED EXPRESS WARRANTY. NO OTHER WARRANTIES ARE GRANTED INCLUDING, BUT NOT LIMITED TO, EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM ANY SAMPLE, WEB SITE, MARKETING MATERIAL, COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE.

12. Limitations of Remedy. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE LIMITED TO REFUND OR REPLACEMENT OF THE PRODUCTS UNDER CLAUSE 11. REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, SELLER'S LIABILITY SHALL NEVER EXCEED THE PRICE PAID BY CUSTOMER FOR THE SPECIFIC PRODUCTS MANUFACTURED BY SELLER GIVING RISE TO THE CAUSE OF

ACTION NOR INCLUDE INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, USE, BUSINESS, OPPORTUNITY, OR REVENUE. SELLER SHALL NOT BE LIABLE FOR PROPERTY DAMAGE AND/OR THIRD PARTY CLAIMS AND/OR INDEMNITY RIGHTS CUSTOMER MAY HAVE AGAINST PERSONS OTHER THAN SELLER.

13. Force Majeure. Seller shall not be held responsible for delay or failure to perform due to labor strikes, acts of government, war, riot, terrorism, pandemics, quarantine restrictions, acts of God or nature or other acts beyond Seller's direct control.

14. Patents. If the Product covered by Customer's order (i) is to be made in accordance with Customer's specifications, or (ii) has been modified after delivery by Customer, or (iv) has been incorporated as a component in another product, or (iv) is used in any manner other than as intended by Seller, and any suit or proceeding is brought against Seller on a claim that the Product or any part thereof constitutes an infringement of any patent of the United States, Customer agrees to defend any such suit or proceeding and to pay all direct and actual damages and costs awarded against Seller therein, provided Customer shall be promptly notified in writing of such suit and given authority, information, and assistance for its defense.

15. Ownership of Intellectual Property Rights.

(a) Except as provided herein, Seller shall retain all right, title and interest in and to all rights worldwide, both statutory and non-statutory, available to protect discoveries, ideas, concepts, designs, inventions, industrial designs, engineering details, processes, mask works, works of authorship, trade secrets, and other intellectual property of any kind, including, without limitation, patents, copyrights, trademarks, trade dress, logos and all other rights available with respect to trade secrets and confidential information (Collectively, "**IP Rights**") based in whole or in part on inventions, developments or improvements created, conceived or reduced to practice by Seller whether prior to, during or after Customer's order, or jointly by Seller and Customer, in connection with or relating to the design, development or manufacture of any Product.

(b) Customer shall retain all right, title and interest in and to all IP Rights based on inventions, developments, or improvements created, conceived and reduced to practice by Customer without reference to any information or contribution of any kind from Seller and that are fully and completely illustrated, described or otherwise reduced to practice in a drawing or other writing or electronic data file provided to Seller prior to Seller initiating design, development, manufacture or customization efforts for a Product of Seller.

(c) Should either party so request, the other will undertake to assure the cooperation of its employees in the preparation and prosecution of any application for IP Rights, including patent rights in the United States of America and other countries with respect to any invention, development or improvement.

16. Tooling.

(a) All jigs, dies, fixtures, molds, patterns, gauges, test equipment, manufacturing aids or replacements thereof (collectively "**Tooling**") furnished or procured by Seller for and used in the manufacture of the Products shall remain Seller's property except as may be expressly agreed by Seller, regardless of any payment by Customer therefor.

(b) Any Tooling furnished by Customer ("**Customer Tooling**") shall remain the property of Customer and shall be redelivered to Customer in the same condition as originally received by Seller, except for reasonable wear and tear. Seller shall not be responsible for variations existing between blueprints and Customer Tooling.

(c) All repairs and changes to Customer Tooling will be made at the expense of Customer. All Customer Tooling stored by Seller shall be at Customer's sole risk, and Seller shall have no liability with respect thereto absent Seller's own willful misconduct. Seller will maintain all Tooling produced specifically for Customer, provided there is no change in Customer's specifications or design, but reserves the right to discard such Tooling along with Customer Tooling if no orders are received for Products made therefrom for three (3) years or more. Seller may charge a reasonable amount for storage of Customer Tooling not used in the previous six (6) months.

17. Export Regulations. Unless otherwise agreed by Seller in writing, all products to be sold to Customer hereunder are to be delivered in the United States and are not intended for export. Customer shall not export any of Seller's products except in strict conformity with the laws, rules, and regulations of the United States (including the International Traffic in Arms Regulations (ITAR)) and other countries. Customer shall be solely responsible for costs of obtaining all licenses, permits or exemptions required for any such exportation. Customer shall defend, indemnify, and hold Seller harmless from and against any claims, losses, suits, fines, penalties, judgments and damages, including incidental and consequential damages and attorneys' fees, incurred by Seller as a direct or indirect result of Customer's failure to comply with applicable laws, rules, and regulations.

18. General Provisions.

(a) Customer shall have no right to assign its rights or delegate its obligations except with the express written consent of Seller. Any prohibited assignment shall be null and void.

(b) There are no understandings, agreements or representations, expressed or implied, not specified in these Terms and Conditions and any contract in which they are intended by Seller to be incorporated. No representative of Seller has any authority to modify these terms and conditions unless the modification is contained in a written instrument signed by a duly authorized representative of Seller. All stenographical, typographical and clerical errors in quotations and specifications may be corrected at any time by Seller.

(c) No action, regardless of form arising relating to the Products, may be brought by Customer more than one (1) year after the cause of action has accrued. The contract governed by these Terms and Conditions is formed and shall be construed under the laws of the Commonwealth of Pennsylvania. Any and all suits or actions relating to the Products or their sale or use shall be brought only in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania and Customer irrevocably consents to the jurisdiction of and venue in such courts, and to service or process to any address listed on Customer's purchase order.